

Appl. No. 10/672,568
RCE dated November 1, 2004
Reply to Office Action of September 1, 2004

REMARKS

Reconsideration of the above-identified application in view of the amendments above and the remarks following is respectfully requested. The telephone interview granted by the Examiner with the undersigned attorney is acknowledged with appreciation.

Claims 1-13 were finally rejected; Claims 1-4, 6, and 11-13 rejected under 37CFR§ 102(e) and Claims 1, 5, and 7-10 rejected under § 103. Claims 1, 3-4, 6-7, 9, 12, and 13 are amended herein. Claims 2, 10 and 11 are currently cancelled. New claim 16 is added. No new matter has been added. Amendments submitted herein are intended to place this application in condition for allowance.

Support for the current amendments to the claims is found *inter alia* at page 5, lines 4, 10-11 and 25, pages 6, lines 1-8 and 21-22, page 6, line 27 to page 7, line 5, Claim 11 and Figs. 1A, 1B and 2 and 4, as well as in claim 6 with particular respect to new claim 16.

§ 102(e) Rejections – Hodak

The claims before the Examiner are directed toward a safety bathtub and a method for forming it. The safety bathtub includes a plastic tub shell having an integrally pre-formed thermometer-receiving recess in an upstanding wall of the shell, as described *inter alia* on page 7, lines 4-5 and seen clearly in Figs 1A and 1B. Seating the thermometer in the pre-formed recess formed with the shell, as set forth at page 7, lines 4-5, clearly means that the pre-formed recess is integral with the tub shell. The plastic shell is particularly suitable for use as a tub for bathing babies and small children. The recess is formed with a portion below a recommended water level line and a portion above the recommended water level line. A thermometer, having a measuring portion and a scale portion, is built into the recess. The thermometer is mounted such that the measuring portion is immersed in water when the bathtub has water in it up to the recommended water level line, and the scale portion is out of the water when the bathtub has water in it up to the recommended water level line. It is a particular feature of the present invention that the thermometer is mounted such that its scale portion can be easily viewed at all times and under

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all water conditions by a person outside and above the bathtub. In this way, the safety of a person in the tub, whether a baby or an elderly or infirm person, is substantially improved, as a person can continually monitor the water temperature in the tub without bending or straining to read the temperature.

The Examiner has rejected claims 1-4, 6, and 11-13 under §102(c) as being unpatentable over Hodak (USP 6,618,867). Specifically, the Examiner states that Hodak discloses a swimming pool including an upstanding sidewall and a built-in thermometer which can be monitored by a person outside and above the pool. He further states that the thermometer is mounted in recess (43) preformed in the wall.

It is respectfully submitted that the structure and function of the pool of Hodak are totally different from those described and claimed in the present application. The Hodak patent describes and claims a removable, decorative swimming pool border for use with a swimming pool having a sidewall and a pool liner. There is magnetic attraction between the rear side of the liner and the sidewall, which is preferably steel. A thermometer may be used to cover the ends of the border, which is cut to be shorter than the diameter of the pool so as to leave a space between the edges of the border (col. 3, lines 26-32, col. 6, lines 20-26, and Fig. 6). Thus in the Hodak patent, a decorative thermometer may be used as a fastening element on a removable border on the surface of a swimming pool sidewall magnetically attracted (e.g., made of steel) to the magnetic backing on the pool liner. Furthermore, the thermometer of the Hodak patent is located inside the pool, generally underneath an upper lip of the pool (see, for example, Fig. 2 and Fig. 5), so that it is necessary for one outside the pool to bend over and look from a certain angle in order to read the temperature thereon.

In sharp contrast with the Hodak apparatus, according to the present invention, there is provided a prefabricated plastic bathtub shell having a dedicated recess formed in the plastic upstanding side wall specifically designed for receiving a thermometer. If such a recess were built into the wall of the pool of Hodak, the decorative borders would cover it up,

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so that a thermometer mounted therein could not be read at all from outside the pool. In fact, not only is there no preformed recess in the wall of Hodak, but the only recess in the patent is that formed by the thermometer itself. As stated in col. 6, lines 31-41, two opposed flanges of the thermometer define a recess or gap extending from the flanges to an inner surface of the thermometer body to provide clearance for the adjacent ends of the pool border to slip underneath.

While continuing to traverse the Examiner's rejections, Applicant has, in order to expedite the prosecution, chosen to amend independent claims 1 and 12 in order to clarify and emphasize the crucial distinctions between the present invention and the system disclosed by the Hodak patent cited by the Examiner. Specifically, independent claims 1 and 12 have been amended to clarify that the safety bathtub includes a plastic tub shell having an integrally pre-formed thermometer-receiving recess in an upstanding wall of the shell, that the recess is formed with a portion below a recommended water level line and a portion above the recommended water level line, and that a built-in thermometer is seated in the recess. Support for this amendment can be found in the specification, *inter alia*, on page 5, lines 10-16, page 6, lines 4-6 and page 7, lines 4-5, original claim 11 and the Figures, particularly Figs. 1A and 1B. As stated above, seating the thermometer in the pre-formed recess formed with the shell, as set forth at page 7, lines 4-5, clearly means that the pre-formed recess is integral with the tub shell.

In this regard claims 2 and 11 have been canceled without prejudice.

As to claim 3 (amended to depend from claim 1), the Examiner states that the thermometer of Hodak is releasably snap fit into the recess by using a magnet. It is respectfully submitted that the term "snap fit" refers to frictional engagement between two elements, while a magnet operates by magnetic force between two metals, regardless of shape. Accordingly, claim 3 has been amended to indicate that the thermometer is releasably mounted by friction in the recess. Support for this amendment is found on page 5, line 25.

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With regard to claim 4, the Examiner states that Hodak discloses a thermometer permanently mounted using adhesive. It is respectfully submitted that mounting the thermometer using adhesive is not inventive, *per se*, but is only in context of the bathtub claimed in amended claim 1.

As far as claim 6 is concerned, the Examiner states that the thermometer of Hodak is an angled thermometer as it is at a generally 90 degree angle with respect to element 18 (of Hodak). It is respectfully submitted that the thermometer in Hodak is a straight thermometer, i.e., it is a substantially flat strip with side flanges. The angled thermometer of claim 6 of the present invention, on the other hand, is an angular thermometer bent to define an angle of close to 90 degrees, so as to conform to the side and top lip of the bathtub, as illustrated in Fig. 4. In this way, the scale of the thermometer can seat along the top edge of the bathtub so it can be read, for example by a baby's mother, standing above the tub without requiring bending or contortions of the viewer. No such thermometer is taught or suggested in Hodak. Claim 6 as amended and new claim 16 recite that the thermometer is bent, and not just mounted at an angle.

Regarding claims 12 and 13, the Examiner states the method as claimed would be inherent during the normal use of the Hodak device. It is respectfully submitted that, as stated above with regard to claim 1, the method and structure of the present invention are totally different from that of Hodak. The Hodak method involves providing a removable border around a swimming pool wall or liner, and sealing the ends behind a decorative thermometer. There is no teaching or suggestion in Hodak of forming a prefabricated tub shell having an integrally formed recess in an upstanding wall of the tub for holding a thermometer, as claimed in amended claim 12.

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Applicant believes that the claims as amended completely overcome the Examiner's rejections on § 102(b) grounds as to independent claims 1 and 12, as well as the dependent Claims 2-4 and 13. New claim 16 claims the method of providing a bent thermometer in a recess extending from a sidewall to an upper lip of the bathtub shell. It is, therefore, respectfully submitted that all claims, 1-4, 6, 12, 13 and 16 are not anticipated by Hodak.

§ 103 Rejection - Hodak and Parker

The Examiner has rejected claim 5 under § 103(a) as being unpatentable over Hodak in view of Parker (USP 3,965,742). Specifically, the Examiner states that it would have been obvious to utilize the digital thermometer of Parker in the swimming pool of Hodak.

The patent to Hodak has been discussed above. The Parker patent discloses a digital thermometer which, in some embodiments, is suitable for use in a swimming pool.

It is respectfully submitted that Applicant is not claiming a digital thermometer, *per se*. Rather, in claim 5 he is claiming a digital thermometer in the safety bathtub claimed in amended claim 1. Even utilizing a digital thermometer of Parker in the patent of Hodak will not result in the bathtub of the present invention. As stated above, Hodak utilizes a decorative thermometer, which could be a digital thermometer, to cover the ends of a swimming pool border mounted on a liner or metal swimming pool wall. There is no teaching or suggestion in Hodak or Parker, taken separately or together, of a safety bathtub formed of a prefabricated shell with an integrally formed recess for a thermometer, to permit continuous temperature monitoring by a person outside the bathtub, as in the present invention.

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§ 103 Rejection – Hodak and Wolfgang

The Examiner has rejected claim 7 under § 103(a) as being unpatentable over Hodak in view of Wolfgang (GB 2108838). Specifically, the Examiner states that Hodak does not disclose that the thermometer is mounted flush with the wall, but that the Wolfgang reference discloses a bath mat having a thermometer mounted flush with the surface of the mat. (It is noted that "Wolfgang" is the first name of the inventor of GB 2108338; the inventor's last name is "Anger".)

The patent to Hodak has been discussed above. The patent to Wolfgang discloses a bath mat for fastening to the inside of a bath. The bath mat is provided with a thermometer which is set into a recess in the mat, and the recess is sealed by a transparent foil (Abstract). Thus, the thermometer in Wolfgang is recessed in the bath mat (and not flush with a surface of the bath mat), and then the bath mat is seated on top of the wall of the bath. Thus, in the Wolfgang patent, a separate "thermometer holder" is provided which is placed into the bathtub. Since the bath mat is designed to prevent slippage in the tub, it is entirely submerged in the water, and thus cannot be read from outside and above the tub once water, dirt, soap and a body have been put into the tub.

On the other hand, the thermometer of the present invention is seated in a pre-formed recess which was designed only to receive the thermometer, and the surface of the thermometer is preferably flush with the upstanding wall in which it is mounted, and does not protrude or extend into the tub. See for example, Fig. 2. If the Hodak reference were modified in view of the teaching of Wolfgang, by mounting a thermometer flush with the wall of the pool, it would not be able to serve its intended function of securing the ends of the decorative border.

While continuing to traverse the Examiner's rejections, Applicant has, in order to expedite the prosecution, chosen to amend claim 7 in order to clarify and emphasize the crucial distinctions between the present invention and the swimming pool border disclosed by

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the Hodak patent cited by the Examiner. Specifically, claim 7 has been amended to clarify that the thermometer is seated within the preformed recess in the tub shell, flush with an upstanding wall, so as not to protrude or extend into the bathtub. Support for this amendment is found in the specification on page 5, line 4, page 6, lines 1-3 and 21-22, and in Fig. 2.

§ 103 Rejection – Lopes et al. and Blaney

The Examiner has rejected claims 1 and 8-10 under § 103(a) as being unpatentable over Lopes et al. (USP 6,578,209) in view of Blaney (USP 6,105,618). Specifically, regarding claims 1 and 8, the Examiner states that Lopes et al. disclose a plastic-formed tub for bathing an infant and a built-in temperature indicator or thermometer. The thermometer includes a first portion (38, 46) immersed in water and a second portion (at 52) located out of the water. As the Examiner correctly states, the thermometer is used to monitor the water temperature **before use**.

As further correctly stated by the Examiner, the thermometer of the Lopes et al. patent does not have a measuring portion immersed in the water and a scale portion outside the water for reading from outside and above the tub. Rather, the plug only indicates too hot or not too hot. In Lopes et al. a drain hole is provided on the bottom of the tub (and not an upstanding sidewall, as in the present invention) (col. 4, lines 49-52). A drain plug 36 is provided to plug the drain hole in the bottom of the tub. The drain plug may be formed of a material that changes color at elevated temperatures or include some other temperature indicator. Therefore, the user must turn the bathtub upside down, as shown in Fig. 5, and dump out the baby or bathing person, in order to see the portion which is outside the water! Accordingly, this device cannot be used to continually monitor the temperature of water inside the bath tub during use, as claimed in currently amended claims 1 and 12.

The Examiner states that the Blaney reference discloses a plug including a measuring portion and a scale portion for indicating the temperature of the water. Furthermore, regarding claims 9 and 10, the Examiner states that the thermometer of Blaney is mounted flush in a recess (the drain hole, which is not shown) preformed in the wall of the tub.

The patent to Blaney discloses a plug for a bath or sink having a portion or attached member which changes color depending upon temperature. This plug and/or member must be immersed in water to register the temperature of the water. Contrary to the Examiner's statement, the plug does not include a measuring portion (13) and a scale portion (14). Rather, it includes a thermochromic member (13) having a color-changing indicia (14) thereon which changes color when the thermochromic member is immersed in hot water (col. 2, lines 38-45). Further, it discloses a thermometer pluggable into a drain hole in the bottom of the tub which is completely immersed in water when there is water in the bathtub. Like conventional thermometers, it will be covered by water, soap suds, children's toys, etc. so it is not readily readable when the bathtub is in use by a person outside the tub.

Thus, neither the patent to Lopes et al nor the patent to Blaney teaches or suggests the use of a thermometer having a measuring portion under water and a separate scale portion outside the water and easily viewable without special effort from above the tub, as claimed in the present application. Accordingly, claims 1 and 8 are deemed to be allowable over Lopes et al in view of Blaney.

Regarding claims 9 and 10, neither the Lopes et al. patent nor the Blaney patent teaches or suggests a preformed recess in an upstanding side wall of the tub specifically for holding a thermometer, as claimed in amended claim 1. Similarly, neither teaches nor suggests seating a thermometer inside such a recess such that it is flush with the upstanding wall of the tub. On the contrary, the Blaney patent teaches a plug for a bath or sink having a

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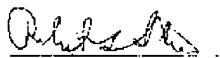
protruding element for holding a chain to remove the plug from the drain hole, or an attached temperature indicating member, each of which intentionally extends into the tub.

Furthermore, claims 9 and 10 depend from, and add additional limitations to claim 8. Accordingly, all of claims 1 and 8 to 10 are deemed to be allowable over Lopes et al in view of Blaney.

Moreover, while continuing to traverse the rejection based upon the patents to Lopes et al and Blaney for the reasons set forth above, it is also called to attention that currently amended claim 1 incorporates the requirements of original claim 2 with respect to the thermometer being mounted in a recess in the wall. The patents to Lopes et al and Blaney were not applied against claim 2 and are not pertinent to currently amended claim 1 and claims dependent thereupon.

In view of the above amendments and remarks it is respectfully submitted that independent claims 1 and 12, and hence dependent claims 3-9, 13 and 16, are in condition for allowance. Examination and allowance is, therefore, respectfully solicited. In the event the Examiner deems that outstanding issues remain, he is respectfully requested to telephone the undersigned attorney in an effort to resolve such issues.

Respectfully submitted,


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